

## **Appendix 27 – Monitoring Officer Protocol**

This protocol has been produced following the recommendation of the District Auditor that guidelines be produced for the benefit of Members and Senior Officers on the role of the Monitoring Officer which in Norfolk is discharged by the Director of Governance.

### **1. Introduction**

This protocol explains the role and functions of the County Council's Monitoring Officer and the arrangements for ensuring this role is effectively carried out. It is based on the understanding that the ability of the Monitoring Officer to undertake this role effectively depends on excellent working relations with colleagues and Members and on the flow of information and access to debate particularly at early stages.

### **2. Functions**

The specific functions of the County Council's Monitoring Officer are detailed in the Appendix. The chief responsibilities can be summarised as these:

- (a) A duty to report to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision is or is likely to be illegal or to constitute maladministration. These matters are referred to in this Protocol as "reportable incidents".
- (b) A range of functions relating to Members' conduct.
- (c) Specific functions under the Council's Constitution.

### **3. Discharge of Functions**

3.1 In order to ensure the effective undertaking of these duties, the Monitoring Officer will:

- (a) Have regular meetings with each of the Head of Paid Service, Executive Director Finance & Commercial Services and Commercial Services, and Assistant Director of Governance (Democratic and Regulatory Services )to review current and likely future issues with legal, constitutional or ethical implications.
- (b) Maintain good liaison and working relations with the District Auditor.
- (c) Ensure that the County Council is kept up to date on new legislation and changes in the law which are relevant to the carrying out of the County Council's activities. This will generally take the form of reports to Members and briefing notes to Chief Officers but where appropriate will involve training sessions for relevant Members and Officers. These activities will be carried out in consultation and conjunction with relevant Chief Officers.

3.2 In addition, Chief Officers will ensure that:

- (a) The Monitoring Officer, their Deputy and the Senior Officers at nplaw are consulted at an early stage on new policy proposals and on matters which have potentially significant legal implications. Where there is any doubt, the Chief Officer should always consult.
- (b) All draft reports to the Council and Committees should as a matter of routine be cleared with the Monitoring Officer, Deputy or the senior staff at nplaw.
- (c) The Monitoring Officer is informed of all emerging issues of concern of a legal, ethical or constitutional nature.

Similarly, Members should ensure that the Monitoring Officer is routinely informed and consulted in respect of new policy proposals.

The Monitoring Officer will always seek to resolve any potential illegality by identifying alternative and legitimate means of achieving the objective of the purpose. (See also para. 3.5(a)).

3.3 Also, in cases where external Lawyers are acting for the County Council, it will be necessary for the relevant Chief Officer and the Monitoring Officer to agree arrangements for ensuring that vires and constitutional issues are satisfactorily addressed.

- 3.4 (a) The Monitoring Officer will seek to resolve potential reportable incidents (as defined in para 2(a)) by avoiding the illegality, etc., or by identifying alternative and legitimate means of achieving the objective of the proposal. Accordingly, and given that County Council Officers and Members are encouraged to consult the Monitoring Officer in respect of any proposal, the Monitoring Officer will only need to make a public report on the matter if the proposal were to be a potential reportable incident and the Officer or Member subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer.
- (b) Where the Monitoring Officer receives a complaint of a potential reportable incident, they must in appropriate cases seek to resolve the matter amicably, by securing that any illegality or failure of process is rectified. However, it is recognised that the Monitoring Officer may decide that the matter is of such importance that a statutory report is the only appropriate response.
  - (c) In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer will be entitled to add their written advice to the report of any other County Council Officer.
  - (d) Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Head of Paid Service and the Executive Director Finance and Commercial Services, they are of the opinion that such is necessary in order to respond properly to a reportable incident.

3.5 Finally, and to assist in the effective undertaking of these duties, the Monitoring Officer will have the following rights:

- (a) To receive advance notice of meetings whether formal or informal between Chief Officers and the Leader, Cabinet Members, the Executive or Committee Chairs will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise, together with the right to attend such meetings.
  - (b) To receive advance notice of meetings of the Council's, Corporate Board, Executive Directors and agenda and reports and the right to attend and speak.
  - (c) To see all documents and information held by or on behalf of the County Council, including documents and information held by any Council Officer or Member. However, this right does not extend to documents and information held by or on behalf of any political party represented on the Council.
  - (d) To attend any meetings of Officers or Members (or both), whether such meetings include any other persons. However, this right does not extend to any meetings held by or on behalf of any political party represented on the Council.
  - (e) To require any County Council Officer or Member, or any contractor to provide an explanation of any matter under investigation.
  - (f) To report to the Council, and its Committees, including a right to present a written report and to attend and advise orally.
  - (g) To have access to the Head of Paid Service and to the Executive Director Finance & Commercial Services and Commercial Services (as the Council's Section 151 Officer).
  - (h) After consultation with the Head of Paid Service and the Executive Director Finance & Commercial Services and Commercial Services, to notify the Police, the Council's Auditors and other regulatory agencies of concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions.
- To obtain, at the Council's expense, legal advice, either internally or from an independent external Solicitor or Barrister, on any matter which it is believed may be a reportable incident.

#### **4. Conflicts**

Where the Monitoring Officer is in receipt of a complaint or is aware of a potential reportable event relating to a matter upon which they have previously advised the County Council, they must consult the Head of Paid Service who may then either refer the matter to the Deputy Monitoring Officer for investigation and report back to the Head of Paid Service or request a neighbouring authority to make their Monitoring Officer available to the County Council to investigate the matter and report to the Head of Paid Service and/or the County Council as appropriate.

## **Functions of Monitoring Officer**

### **A. Functions under Section 5 of the Local Government and Housing Act 1989**

To report to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision of the authority in respect of any matter which, in their opinion, has given rise to or is likely to or would give rise to any illegality or maladministration.

### **B. Functions relating to Standards**

- (1) To act as the principal adviser to the Standards Committee and in that role to contribute by training and otherwise to the provision and maintenance of high standards of conduct.
- (2) To maintain the Register of Members' Interests and in this connection to receive from Members written notification of disclosable pecuniary interests and other interests and to receive written notification of any change to those interests.
- (3) To receive written notification from Members of the existence and nature or any gift or hospitality exceeding £50.
- (4) Dealing with complaints against Members, including the conduct of investigations and reporting to the Standards Committee.
- (5) To process requests from Members for dispensations to speak and vote at meetings.
- (6) To maintain and promote the Council's Anti-Fraud and Corruption Strategy.
- (7) To keep the Code of Corporate Governance under review.

### **C. Functions relating to the Constitution**

- (1) To refer matters relating to conduct, ethics and propriety to the Standards Committee.
- (2) To monitor the operation of the Constitution and to make recommendations on how it can be amended in order to better to achieve the overall purposes. This may include observing meetings of different parts of the Member/Officer structure; undertaking an audit trail of a sample of decisions; recording and analysing issues raised by Members, Officers, the public and other relevant stakeholders; and comparing practices in this authority with those in other comparable authorities, or national examples of best practice.

- (3) To be consulted by the Assistant Director of Governance (Democratic and Regulatory Services )on changes to factual references in the Constitution or changes required by a change in the law. Also, to publish changes to the Constitution.
  
- (4) To publicise the Constitution by ensuring that access is given to each Member on their being elected to the Council; ensuring that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local media and the public on payment of a reasonable fee; ensuring that the executive summary is made widely available within the area and is updated as necessary; and ensuring the publication of changes made.